

SENATE BILL No. 221

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7.

Synopsis: County plan commission membership. Provides that a member of a plan commission or board of zoning appeals who represents an unincorporated area of the county must reside in the unincorporated area or own real property located in the unincorporated area.

Effective: July 1, 2004.

Long, Wyss

January 8, 2004, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 221

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-4-208, AS AMENDED BY P.L.173-2003,
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 208. (a) ADVISORY. The county plan
4 commission consists of nine (9) members, as follows:

5 (1) One (1) member appointed by the county executive from its
6 membership.

7 (2) One (1) member appointed by the county fiscal body from its
8 membership.

9 (3) The county surveyor or the county surveyor's designee.

10 (4) The county agricultural extension educator. However, if the
11 county does not have a county agricultural extension educator, the
12 county extension board shall select a resident of the county who
13 is a property owner with agricultural interest to serve on the
14 commission under this subdivision for a period not to exceed one
15 (1) year.

16 (5) Five (5) members appointed in accordance with one (1) of the
17 following:

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(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. ~~and all~~ **Each of the four (4) of whom members** must be:

residents (i) a resident of an unincorporated areas area of the county; or

(ii) an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. Also one (1) township trustee, who must be a resident of an unincorporated area of the county **or an owner of real property located in whole or in part in an unincorporated area of the county**, appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. ~~and all~~ **Each of the five (5) of whom members** must be:

residents (i) a resident of an unincorporated areas area of the county; or

(ii) an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county legislative body from its membership.

(2) One (1) member appointed by the second class city legislative body from its membership.

(3) Three (3) citizen members who ~~are residents of~~ **reside in an unincorporated areas area of the county or own real property located in whole or in part in an unincorporated area of the**

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county of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county executive.

(6) One (1) citizen member who is a resident of the unincorporated area of the county **or an owner of real property located in whole or in part in the unincorporated area of the county**, appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

(e) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the

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1 powers and duties of a regular member while participating on the
2 commission.

3 SECTION 2. IC 36-7-4-214 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 214. (a) ADVISORY.
5 When a municipal plan commission exercises jurisdiction outside the
6 incorporated area of the municipality as provided for in section 205 of
7 the advisory planning law, the executive of the county in which the
8 unincorporated area is located shall appoint two (2) additional citizen
9 members to the municipal plan commission. The citizen members
10 must:

- 11 (1) reside in the unincorporated area **or own real property**
12 **located in whole or in part in the unincorporated area;** and
13 (2) not be of the same political party.

14 (b) ADVISORY. Initially, one (1) member under subsection (a)
15 shall be appointed for a term of one (1) year and the other for a term of
16 four (4) years. Thereafter, each appointment is for a term of four (4)
17 years. The additional citizen members are entitled to participate and
18 vote in all deliberations of the municipal plan commission.

19 (c) ADVISORY. If the unincorporated area referred to in subsection
20 (a) lies in two (2) counties, the executive of each of those counties shall
21 appoint one (1) of the additional citizen members. The executive of the
22 county having the larger proportion of the unincorporated area shall
23 appoint its member first, and the executive of the other county shall
24 then appoint its member, who must not be of the same political party.

25 SECTION 3. IC 36-7-4-215 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 215. ADVISORY. In
27 addition to the requirements of section 214 of this chapter, the
28 executive of the county may also appoint as members of a town plan
29 commission additional representatives **from who reside or own real**
30 **property located in whole or in part in** the unincorporated
31 jurisdictional area, if the executive believes the additional
32 representation is justifiable. The number of appointments shall be
33 determined as follows:

- 34 (1) Two (2) citizen members, if the population of the
35 jurisdictional area appears to be at least fifty percent (50%) but
36 not more than one hundred percent (100%) of the population of
37 the town itself.
38 (2) Four (4) citizen members, if the population of the
39 jurisdictional area appears to be greater than that of the town
40 itself.

41 These additional members must have the same qualifications and are
42 entitled to the same terms and privileges as prescribed for the

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additional members appointed under section 214 of this chapter.

SECTION 4. IC 36-7-4-216 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold other elective or appointive office in municipal, county, or state government, except in the case of an area plan commission membership on the school board, the park board, or the board of directors for public utilities or board of trustees for utilities created under IC 8-1-11.1.

(c) Except as provided in subsection (d), a citizen member must be a resident of the jurisdictional area of the plan commission.

(d) A citizen member representing an unincorporated area of the county may reside in the unincorporated area or own real property located in whole or in part in the unincorporated area.

SECTION 5. IC 36-7-4-902 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 902. (a) ADVISORY. Each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the executive of the municipality or county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission.

(2) One (1) citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the plan commission.

(3) One (1) member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

(b) ADVISORY. In each county having a metropolitan plan commission, subsection (a) does not apply. In such a county, each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Two (2) members, of whom no more than one (1) may be of the same political party, appointed by the county legislative body.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) only of these members must be a member of the plan commission.

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(c) AREA. When the area board of zoning appeals was established before January 1, 1984, as a seven (7) member board, the board consists of seven (7) members as follows:

(1) Two (2) citizen members appointed by the area plan commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative.

(2) Three (3) citizen members, who may not be members of any plan commission, appointed by the executive of the largest municipality in the county. However, if there are two (2) or more municipalities having a population of at least twenty thousand (20,000) in the county, the executive of the largest municipality shall appoint two (2) citizen members and the executive of the second largest municipality shall appoint one (1) citizen member. Furthermore, if there are no cities in the county participating in the commission, then the three (3) members appointed under this subdivision shall be appointed as follows:

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(C) One (1) member appointed by the legislative bodies of those towns participating in the commission.

(3) Two (2) citizen members, who may not be members of any plan commission, appointed by the county legislative body.

(d) AREA. Except as provided in subsection (c), each division of the area board of zoning appeals consists of five (5) members as follows:

(1) One (1) citizen member appointed by the area plan commission from its membership.

(2) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission.

(3) Two (2) citizen members, of whom one (1) must be a member of the area plan commission and one (1) must not be a member of any plan commission, appointed by the county legislative body.

(4) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

(e) METRO. Each division of the metropolitan board of zoning appeals consists of five (5) members as follows:

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(1) Two (2) citizen members appointed by the executive of the consolidated city.

(2) Two (2) citizen members appointed by the legislative body of the consolidated city.

(3) One (1) citizen member, who may also be a member of the metropolitan development commission, appointed by the commission.

(f) METRO. The municipal board of zoning appeals for an excluded city consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the legislative body of the excluded city.

(2) Two (2) citizen members, who may also be members of the metropolitan development commission, appointed by the commission.

(g) Whenever the zoning ordinance provides for a certain division of the board of zoning appeals to have limited territorial jurisdiction, it must also provide for that division to consist of members who are ~~all~~ residents of that limited territory **or, if the territory includes an unincorporated area of the county, are owners of real property located in whole or in part in the unincorporated area.** Those members shall be appointed in the same manner that is prescribed by subsection (a) for divisions of an advisory board of zoning appeals, but if the plan commission is unable to make its appointment in that manner, the appointment shall be made instead by the legislative body.

SECTION 6. IC 36-7-4-903, AS AMENDED BY P.L.216-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 903. ADVISORY. (a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of the advisory planning law, either:

(1) an additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area and consist only of residents of the unincorporated area **or the owners of real property located in whole or in part in the unincorporated area;** or

(2) the municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter, one (1) of the two (2) citizen members who were appointed under section 214 of this chapter to the plan commission to represent the unincorporated area. The citizen member must reside in the unincorporated area ~~He~~ **or own**

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1 **real property located in whole or in part in the**
 2 **unincorporated area. The citizen** shall be appointed for a term
 3 of four (4) years. ~~He~~ **The citizen** is entitled to participate and vote
 4 in all deliberations of the municipal board of zoning appeals.

5 (b) Notwithstanding section 902(g) of this chapter, if the zoning
 6 ordinance provides for an additional division of the board of zoning
 7 appeals under subsection (a)(1), the ordinance may also provide for the
 8 appointment of one (1) or more members of that division by elected
 9 officials of the county or township.

10 SECTION 7. IC 36-7-4-905 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 905. **(a)** None of the
 12 members of a board of zoning appeals may hold other elective or
 13 appointive office, except as permitted by section 902 of this chapter, in
 14 municipal, county, or state government.

15 **(b) Subject to subsection (c), a member must be a resident of the**
 16 **jurisdictional area of the board.**

17 **(c) A member representing an unincorporated area of a county**
 18 **must reside in the unincorporated area or own real property**
 19 **located in whole or in part in the unincorporated area.**

20 SECTION 8. IC 36-7-5.1-25 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) A member of
 22 the joint district board of zoning appeals may hold no other elective or
 23 appointive office in municipal, county, or state government, except as
 24 permitted by IC 36-7-4-902.

25 (b) A member of the joint district board of zoning appeals must:

26 **(1)** be a resident of a county where a part of the joint district is
 27 located; ~~or~~

28 **(2)** reside within ten (10) miles of the borders of the joint district;
 29 **or**

30 **(3) own real property located in whole or in part in the joint**
 31 **district.**

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